



County of Los Angeles
CHIEF ADMINISTRATIVE OFFICE

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DAVID E. JANSSEN
Chief Administrative Officer

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December 6, 2005

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

**BOARD POLICY ON CONTRACTOR MERGERS/ACQUISITIONS
(ALL DISTRICTS AFFECTED) (3 VOTES)**

IT IS RECOMMENDED THAT YOUR BOARD:

1. Approve a Board policy establishing guidelines and standard solicitation and contract language for County departments to utilize in circumstances where an existing or prospective contractor is in the process of merging or being acquired by another entity, replacing current standard contract language regarding contract delegation and assignment.
2. Instruct the Director of Internal Services to reflect the new standard language under Contracting Document Models on the County Purchasing and Contracts WebPortal.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

On July 19, 2005, your Board directed the Chief Administrative Officer (CAO), County Counsel, and the Chief Information Officer (CIO) to report back with a policy for evaluating companies that are in the process of bidding and negotiating an Information Technology (IT) contract which are being merged with or acquired by another firm. A workgroup consisting of these departments was convened to address this issue. The Internal Services Department provided technical assistance to the workgroup.

Upon further consideration, it was determined that the need for a consistent policy addressing contractor mergers and takeovers should apply not only to IT contracts that are in the solicitation phase, but to all mergers or acquisitions, whether they occur during the solicitation phase or under a current County contract.

Accordingly, the proposed Board policy (Attachment I) provides the following:

- All County contracts must contain standard language which requires disclosure by companies undergoing an acquisition or merger, and provides the County final approval of all contract assignments resulting from such acquisitions or mergers.
- All County solicitation documents must contain standard language requiring disclosure by companies undergoing an acquisition or merger, which allows the County authority to disqualify an otherwise responsive applicant from the process for failure to comply with this provision.
- County departments must conduct a thorough review of such mergers or acquisitions utilizing the minimum set of criteria established in the proposed policy. This review applies to both current contractors, as well as to vendors undergoing the solicitation process. Among the criteria are such considerations as:
 - ✓ Investigation as to whether either vendor/entity is on the County's List of Debarred Contractors.
 - ✓ Identification of the business/legal structure of the surviving entity and the officer(s) authorized to bind the entity contractually.
 - ✓ A thorough assessment of the surviving entity's financial stability.
 - ✓ Consideration of the current DUNN & BRADSTREET rating of the surviving entity, if available.
 - ✓ Examination of the surviving entity's business plan related to the service or product for which the County has contracted or is planning to acquire. Determination if the product/service will continue to be supported and for how long it will be supported.
 - ✓ The surviving entity's written commitment of its willingness to meet the full range of terms and conditions stipulated in County's solicitation document, purchase order, or agreement, as the case may be.

- ✓ Consideration of any other factors that negatively reflect on an entity, which would lead to the conclusion that it would not be in the best interests of the County to continue the contractual relationship.

As set forth in the proposed policy, County departments will have consistent guidelines in conducting an analysis of contractor mergers or acquisitions to help them determine if it is appropriate or within the County's best interests to continue contracting with a firm which has merged with or been acquired by another firm.

The County Counsel and CIO concur with the recommended policy.

Implementation of Strategic Plan Goals

This action supports the following County Strategic Plan Goals:

- **Goal 3: Organizational Effectiveness** – Ensure that service delivery systems are efficient, effective, and goal-oriented.
- **Goal 2: Fiscal Responsibility** – Strengthen the County's fiscal capacity.

FISCAL IMPACT/FINANCING

There is no fiscal impact associated with the recommended action.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The standard contract language established by the proposed policy, replaces existing language found in the Standard Terms and Conditions (Section 8.1, Assignment and Delegation) of the sample contract.

In addition, the standard language to be incorporated into all County solicitation documents will require that vendors notify the County of pending acquisitions/mergers via the *Proposer's Organization Questionnaire/Affidavit* (Attachment II).

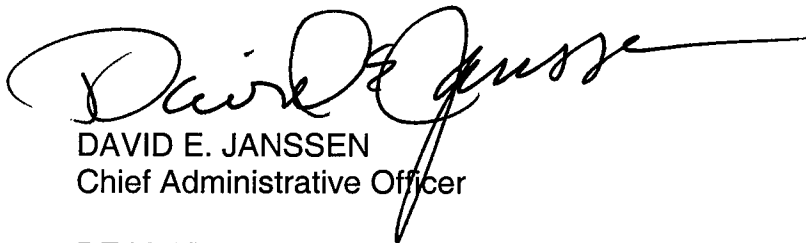
Instructions on the use of this policy, its provisions, as well as the evaluation criteria, will be incorporated into the curriculum for future cohorts of the 100-hour County Contract Manager/Analyst certificate course offered through the Los Angeles County Learning Academy.

Honorable Board of Supervisors
December 6, 2005
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IMPACT ON CURRENT SERVICES (OR PROJECTS)

Approval of this policy, as delineated in the recommendation, will enable your Board to implement a uniform countywide approach to evaluating contractor mergers and acquisitions and help promote protection of the County's interests and most effective and appropriate commitment of its resources.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David E. Janssen", with a long horizontal flourish extending to the right.

DAVID E. JANSSEN
Chief Administrative Officer

DEJ:MKZ
AG:os

Attachments (2)

c: All Department Heads



Los Angeles County
BOARD OF SUPERVISORS POLICY MANUAL

Policy #:	Title:	Effective Date:
0.000	Evaluation of Vendors/Contractors Engaged in Mergers or Acquisitions	00/00/00

PURPOSE

Provides guidelines for the evaluation of vendors in the process of proposing/bidding on or negotiating County contracts or contractors who are currently under contract with the County that become engaged in mergers and acquisitions; provides standard contract language addressing the assignment of County contracts; requires notice to the County of pending acquisitions and mergers in County solicitation documents.

REFERENCE

July 19, 2005, Board Order 33

POLICY

The County of Los Angeles has experienced situations involving vendors who are in the process of submitting proposals or bids in response to County solicitations, negotiating County contracts, or under contract with the County, and are acquired by or merge with another firm. Given the potential issues the County may face as a result of such acquisitions or mergers, the following guidelines for evaluating such vendors and contractors, and standard language for inclusion in all County solicitation documents and contracts are established:

GUIDELINES FOR EVALUATING ASSIGNMENTS RESULTING FROM MERGERS OR ACQUISITIONS INVOLVING COUNTY BIDDERS/PROPOSERS AND CONTRACTORS

Standard terms and conditions for County solicitation documents and agreements require bidders/proposers and contractors to notify the County of planned mergers, acquisitions or other corporate actions that could result in the assignment of a proposal under an active solicitation or an established agreement.

Upon a County department's receipt of notice of the proposed assignment resulting from a merger or acquisition, the department must conduct a thorough review of the impact of the merger or acquisition. This review should include, at minimum:

1. Investigation as to whether either vendor/entity is on the County's List of Debarred Contractors.
2. Identification of the name of the proposed or surviving entity following the merger or acquisition.
3. Identification of the business/legal structure of the surviving entity and the officer(s) authorized to bind the entity contractually.
4. Identification of the surviving entity's state of incorporation or organization and home office location.
5. A thorough assessment of the surviving entity's financial stability. Obtain a copy of the entity's most recent balance sheet, financial statement and/or annual report and any other financial information that reflects the entity's current financial status.
6. Consideration of the current DUNN & BRADSTREET rating of the surviving entity, if available.
7. Examination of the surviving entity's business plan related to the service or product for which the County has contracted or is planning to acquire. Determine if the product/service will continue to be supported and for how long it will be supported.
8. Investigation of whether there is a comparable product/service being offered by the surviving entity in consideration for replacing the product/service currently in use.
9. The surviving entity's written commitment of its willingness to meet the full range of terms and conditions stipulated in County's solicitation document, purchase order, or agreement, as the case may be
10. Consideration of any other factors that negatively reflect on an entity, which would lead to the conclusion that it would not be in the best interests of the County to enter into or continue the contractual relationship.

STANDARD LANGUAGE TO BE INCLUDED IN COUNTY CONTRACTS

The following policy language shall be incorporated in substantially similar form into all County contracts:

"ASSIGNMENT BY CONTRACTOR"

- A. Contractor shall not assign its rights or delegate its duties under the Agreement, or both, whether in whole or in part, without the prior written consent of County, in its discretion, and any attempted assignment or delegation without such consent shall be null and void. For purposes of this paragraph, County consent shall require a written amendment to the Agreement, which is formally approved and executed by the parties. Any payments by County to any approved delegate or assignee on any claim under the Agreement shall be deductible, at County's sole discretion, against the claims which Contractor may have against County.
- B. Shareholders, partners, members, or other equity holders of Contractor may transfer, sell, exchange, assign, or divest themselves of any interest they may have therein. However, in the event any such sale, transfer, exchange, assignment, or divestment is effected in such a way as to give majority control of Contractor to any person(s), corporation, partnership, or legal entity other than the majority controlling interest therein at the time of execution of the Agreement, such disposition is an assignment requiring the prior written consent of County in accordance with applicable provisions of this Agreement.
- C. Any assumption, assignment, delegation, or takeover of any of the Contractor's duties, responsibilities, obligations, or performance of same by any entity other than the Contractor, whether through assignment, subcontract, delegation, merger, buyout, or any other mechanism, with or without consideration for any reason whatsoever without County's express prior written approval, shall be a material breach of the Agreement which may result in the termination of the Agreement. In the event of such termination, County shall be entitled to pursue the same remedies against Contractor as it could pursue in the event of default by Contractor."

STANDARD LANGUAGE TO BE INCLUDED IN COUNTY SOLICITATION DOCUMENTS

The following policy language shall be incorporated in substantially similar form into all County solicitation documents:

"NOTIFICATION TO COUNTY OF PENDING ACQUISITIONS/MERGERS BY PROPOSING/BIDDING COMPANY"

The vendor shall notify the County of any pending acquisitions/mergers of their company. This information shall be provided by the Vendor on *Required Form - Exhibit __ - Proposer's Organization Questionnaire/Affidavit*. Failure of the vendor to provide this information may eliminate its proposal/bid from any further consideration."

RESPONSIBLE DEPARTMENT

Chief Administrative Office

Chief Information Office

County Counsel

DATE ISSUED/SUNSET DATE

Issue Date: December 13, 2005

Sunset Date: December 13, 2009

REQUIRED FORMS - EXHIBIT ____

PROPOSER'S ORGANIZATION QUESTIONNAIRE/AFFIDAVIT

Page 1 of 2

Please complete, date and sign this form and place it as the first page of your proposal. The person signing the form must be authorized to sign on behalf of the Proposer and to bind the applicant in a Contract.

1. If your firm is a corporation, state its legal name (as found in your Articles of Incorporation) and State of incorporation:

_____ Name	_____ State	_____ Year Inc.
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2. If your firm is a partnership or a sole proprietorship, state the name of the proprietor or managing partner:

3. If your firm is doing business under one or more DBA's, please list all DBA's and the County(s) of registration:

Name	County of Registration	Year became DBA
_____	_____	_____
_____	_____	_____

4. Is your firm wholly or majority owned by, or a subsidiary of, another firm? ____ If yes,

Name of parent firm: _____

State of incorporation or registration of parent firm: _____

5. Please list any other names your firm has done business as within the last five (5) years.

Name	Year of Name Change
_____	_____
_____	_____

6. Indicate if your firm is involved in any pending acquisition/merger, including the associated company name. If not applicable, so indicate below.

Proposer acknowledges and certifies that it meets and will comply with all of the Minimum Mandatory Requirements listed in Paragraph 1.4 - Minimum Mandatory Requirements, of this Request for Proposal, as listed below.

(list each minimum requirement stated in Paragraph 1.4

Check the appropriate boxes:

- ☐ **Yes** ☐ **No** Sub-paragraph 1.4.1 _____ years experience, within the last ____ years
- ☐ **Yes** ☐ **No** Sub-paragraph 1.4.2 Willingness to consider hiring GAIN/GROW participants
- ☐ **Yes** ☐ **No** Sub-paragraph 1.4.3 Complies with the County's Child Support Compliance Program
- ☐ **Yes** ☐ **No** Sub-paragraph 1.4.4 Certifies intent to comply with County's Jury Service Program
- ☐ **Yes** ☐ **No** Sub-paragraph 1.4.5 Declares intent to comply with County's Living Wage Program

Proposer further acknowledges that if any false, misleading, incomplete, or deceptively unresponsive statements in connection with this proposal are made, the proposal may be rejected. The evaluation and determination in this area shall be at the Director's sole judgment and his/her judgment shall be final.

Proposer's Name:

Address:

E-mail address: _____ Telephone number: _____

Fax number: _____

On behalf of _____ (Proposer's name), I _____
(Name of Proposer's authorized representative), certify that the information contained in this Proposer's Organization Questionnaire/Affidavit is true and correct to the best of my information and belief.

Signature

Internal Revenue Service
Employer Identification Number

Title

California Business License Number

Date

County WebVen Number